

TECHNICAL INFORMATION RELEASE

# TIR 19-11: Legislation Impacting the Massachusetts Tax Treatment of Selected International Provisions of the Federal Tax Cuts and Jobs Act

DATE:

08/08/2019

REFERENCED SOURCES:

**Massachusetts General Laws** (<https://malegislature.gov/Laws/GeneralLaws>)

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### I. INTRODUCTION

This Technical Information Release (“TIR”) is being issued to explain the Massachusetts tax impact of two recently-enacted supplemental budget bills: “An Act Making Appropriations for the Fiscal Year 2018 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects,” St. 2018, c. 273 (the “2018 Supplemental Budget”) and “An Act Making Appropriations for the Fiscal Year 2019 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects,” St. 2019, c. 5 (the “2019 Supplemental Budget”). Together, these legislative acts determine the Massachusetts tax treatment of so-called “deemed repatriated income” and other international provisions in the federal Tax Cuts and Jobs Act (the “TCJA”), P.L. 115-97.

This TIR repeals and replaces TIR 18-11. TIR 18-11 addressed the Massachusetts treatment of deemed repatriated income under the law as it existed prior to the adoption of the 2018 Supplemental Budget and 2019 Supplemental Budget, and is therefore outdated. This TIR explains the impact of those acts, and also provides additional clarification regarding the reporting of the Internal Revenue Code (“Code”) § 78 gross-up associated with deemed repatriated income. See Section V.

### II. OVERVIEW OF SELECT INTERNATIONAL PROVISIONS IN THE TCJA

#### A. New Deduction for Foreign-source Portion of Dividends Received

Before the TCJA, the U.S. generally taxed income on a worldwide basis, with income earned by foreign subsidiaries generally not subject to U.S. taxation until the income was

distributed as dividends to U.S. shareholders. The TCJA seeks to make the U.S. tax system more territorial. To assist with that goal, for tax years beginning after December 31, 2017, new Code § 245A provides for a 100% deduction for the foreign-source portion of dividends received from certain foreign corporations by corporate U.S. shareholders.<sup>[1]</sup>

[\(#\\_ftn1\)](#)

## **B. Deemed Repatriated Income**

Under Code § 951, a “U.S. shareholder” (whether corporate or non-corporate) in a controlled foreign corporation (“CFC”) is required to include in income for a taxable year its proportionate share of the CFC’s “Subpart F income” for such taxable year. The TCJA amended Code § 965 to require CFCs and certain other foreign corporations to increase their Subpart F income by an amount equal to the deferred foreign earnings of the foreign corporation that has accumulated since 1986.<sup>[2]</sup> [\(#\\_ftn2\)](#) Income includable under Code § 951 is also subject to the dividend gross-up rules set out in Code § 78. The new law imposes a one-time federal transition tax on this income inclusion at a rate of 15.5% on foreign earnings held as cash and cash equivalents and 8% on foreign earnings held as illiquid assets. The rates are achieved through an effective rate deduction provided in new Code § 965(c). At the election of the shareholder, the federal net tax liability is payable over a period of eight years.<sup>[3]</sup> [\(#\\_ftn3\)](#) An S corporation shareholder may elect to defer the tax liability until the taxable year in which a triggering event occurs with respect to the liability.<sup>[4]</sup> [\(#\\_ftn4\)](#)

In guidance issued in March 2018, the IRS instructed taxpayers who have deemed repatriated income to separately report that income using the IRC 965 Transition Tax Statement (the “965 statement”), to be filed with their federal tax returns.<sup>[5]</sup> [\(#\\_ftn5\)](#) Taxpayers were advised to make two separate federal payments: one reflecting the federal tax owed without regard to Code § 965 and a second, separate payment reflecting the amount of tax owed attributable to Code § 965.

## **C. Global Intangible Low-Taxed Income**

The TCJA added new Code § 951A, which requires a CFC’s U.S. shareholders, both corporate and non-corporate, to include their pro rata share of the CFC’s “global intangible low-taxed income” (“GILTI”) in gross income each year, starting in taxable years beginning

after December 31, 2017.<sup>[6] (#\_ftn6)</sup> GILTI is defined as the U.S. shareholder's excess (if any) of its "net CFC tested income" over its "net deemed tangible income return", as those terms are defined under Code § 951A.<sup>[7] (#\_ftn7)</sup> A shareholder's pro rata share of GILTI is included in income without regard to whether the CFC actually distributed the amount to the shareholder. Under new Code § 250, U.S. corporate shareholders are eligible for a deduction equal to 50% (reduced to 37.5% for tax years beginning after December 31, 2025) of their GILTI amount, plus any deemed dividend under Code § 78 to the extent such amount is attributable to GILTI.<sup>[8] (#\_ftn8)</sup> Under Code § 250, this deduction is available only to corporations.

#### **D. Deduction For Foreign-Derived Intangible Income**

Under new Code § 250, for tax years beginning after December 31, 2017, U.S. C corporations are eligible for a deduction equal to 37.5% (reduced to 21.875% for tax years beginning after December 31, 2025) of their "foreign-derived intangible income" ("FDII").<sup>[9] (#\_ftn9)</sup> The deduction reduces the tax rate on foreign-derived sales and service income in excess of a base amount to 13.125%. As with the deduction for GILTI, this deduction is available only to corporations.

### **III. PROVISIONS OF THE SUPPLEMENTAL BUDGETS**

#### **A. For Corporate Taxpayers**

The 2018 Supplemental Budget provided for the following amendments to General Laws chapter 63:

- Amounts included in federal gross income pursuant to Code §§ 951 and 951A are treated as a "dividend" as that term is used in sections 1, 30, and 38(a), and are also treated as a dividend for purposes of the definition of "net income" in sections 1 and 30.<sup>[10] (#\_ftn1)</sup>
- Massachusetts decouples from the deductions in Code §§ 245A, 250 and 965(c).<sup>[11] (#\_ftn2)</sup>

- For purposes of section 2A, dividends that are deemed to be received from an entity, including amounts included in federal gross income pursuant to Code §§ 951 and 951A, are not considered to be “receipts” when determining the receipts factor of the apportionment formula for financial institutions.[\[12\]](#) ([#\\_ftn3](#))
- The amendments apply to a taxpayer’s last taxable year commencing before January 1, 2018 and to the taxpayer’s subsequent taxable years.[\[13\]](#) ([#\\_ftn4](#))

## **B. For Individual Taxpayers**

The 2018 Supplemental Budget, as amended by the 2019 Supplemental Budget, sets forth the Massachusetts treatment of deemed repatriated income and GILTI for purposes of General Laws chapter 62. Those laws provide:

- For purposes of chapter 62, the list of Code sections Massachusetts conforms to as currently in effect for the taxable year has been expanded, and now includes Code §§ 951, 951A, 959 and 961.[\[14\]](#) ([#\\_ftn5](#))
- Amounts included in federal gross income pursuant to Code §§ 951 and 951A, including deemed repatriated income, will be treated as Part A dividend income under chapter 62.[\[15\]](#) ([#\\_ftn6](#))
- Deemed repatriated income will be taken into account in the taxable year ending December 31, 2019, with a deduction equal to 60% of such income.[\[16\]](#) ([#\\_ftn7](#))
- In the case of an individual taxpayer with deemed repatriated income who, for federal purposes, made an election under Code § 965(h) or Code § 965(i), the tax liability attributable to such income will be due in 8 installments, but the deferral provisions of Code § 965(i) do not apply.[\[17\]](#) ([#\\_ftn8](#))
- The changes apply to taxable years beginning on or after January 1, 2017.[\[18\]](#) ([#\\_ftn9](#))

# **IV. RESULTING MASSACHUSETTS TAX TREATMENT**

## **A. For Corporate Taxpayers**

### **1. Deemed Repatriated Income**

Pursuant to chapter 63, as amended by the 2018 Supplemental Budget, deemed repatriated income is treated as dividend income for Massachusetts purposes and is included in the net income of both a general business corporation and a financial institution.<sup>[19]</sup> Similar to dividends more generally, deemed repatriated income is eligible for the 95% dividends received deduction pursuant to G.L. c. 63, §§ 1, 30.4, and 38(a),<sup>[20]</sup> subject to the voting stock ownership requirements referenced in those sections.<sup>[21]</sup> The deduction under Code § 965(c) is not allowed for Massachusetts purposes.<sup>[22]</sup> Deemed repatriated income must be included in Massachusetts gross income for the same tax year it is included in federal gross income. Unlike the TCJA, Massachusetts does not offer an election to pay tax liability attributable to deemed repatriated income over an eight year period. Payment of Massachusetts tax liability resulting from deemed repatriated income is governed by the relevant provisions of G.L. c. 62C.

In general, a business corporation subject to tax under G.L. c. 63, § 39 or § 2 that is taxable in another state and that therefore apportions its income to Massachusetts will be subject to the apportionment provisions of G.L. c. 63, § 38 or 2A, respectively.<sup>[23]</sup> Under § 38, the sales factor of the apportionment formula as determined for a general business corporation expressly excludes “interest, dividends and gross receipts from the maturity, redemption, sale, exchange or other disposition of securities.”<sup>[24]</sup> For purposes of apportionment under G.L. c. 63, § 2A, as amended by the Supplement Budget, the receipts factor of a financial institution excludes amounts included in federal gross income pursuant to Code §§ 951 and 951A. Consequently, deemed repatriated income is not included in the apportionment factors of either a business corporation under section 38 or a financial institution under section 2A.

Moreover, the statutory inclusion of five percent of dividends is intended as a disallowance of expenses of the corporation reporting the dividend income, rather than as a tax on the earnings and profits of the subsidiary corporation making the dividend.<sup>[25]</sup> In general, an expense disallowance does not implicate the taxpayer’s apportionment calculation.

## 2. GILTI

GILTI is included in a corporation's net income as determined under G.L. c. 63, § 30.4 in the case of a business corporation taxable under G.L. c. 63, 39, and as determined under G.L. c. 63, § 1 in the case of a financial institution taxable under G.L. c. 63, § 2. Pursuant to the 2018 Supplemental Budget, in both instances, GILTI is treated as dividend income for purposes of chapter 63. Also, in both instances, similar to dividends more generally, GILTI is eligible for the 95% dividends received deduction,<sup>[26]</sup> subject to the voting stock ownership requirements.<sup>[27]</sup> The deduction under newly-enacted Code § 250 is not allowed for purposes of chapter 63.<sup>[28]</sup>

In general, a business corporation subject to tax under G.L. c. 63, § 39 or § 2 that is taxable in another state and that therefore apportions its income to Massachusetts will be subject to the apportionment provisions of G.L. c. 63, § 38 or 2A, respectively. Under § 38, the sales factor of the apportionment formula as determined for a general business corporation expressly excludes "interest, dividends and gross receipts from the maturity, redemption, sale, exchange or other disposition of securities."<sup>[29]</sup> For purposes of apportionment under G.L. c. 63, § 2A, as amended by the 2018 Supplemental Budget, the receipts factor of a financial institution excludes amounts included in federal gross income pursuant to Code §§ 951 and 951A. Consequently, GILTI is not included in the apportionment factors of either a business corporation under § 38 or a financial institution under § 2A.

Moreover, the statutory inclusion of five percent of dividends is intended as a disallowance of expenses of the corporation reporting the dividend income, rather than as a tax on the earnings and profits of the subsidiary corporation making the dividend.<sup>[30]</sup> In general, an expense disallowance does not implicate the taxpayer's apportionment calculation.

### **3. Deduction for FDII**

Pursuant to the 2018 Supplemental Budget, Massachusetts decoupled from newly-enacted Code § 250.<sup>[31]</sup> Therefore, no deduction for FDII is allowed under chapter 63.

#### **B. For Individual Taxpayers**

## 1. Deemed Repatriated Income

In general, the determination of gross income for Massachusetts personal income tax purposes utilizes the provisions of the Code as amended on January 1, 2005 and in effect for the taxable year.<sup>[32] (#\_ftn14)</sup> But Massachusetts adopts the Code as currently in effect with respect to certain sections. For taxable years beginning on or after January 1, 2017, the 2018 Supplemental Budget amended G.L. c. 62, § 1 to add Code § 951 to the list of current Code sections.<sup>[33] (#\_ftn15)</sup>

Moreover, the 2019 Supplemental Budget expressly states that amounts included in federal gross income under Code § 951(a) by reason of Code § 965 will be included in Massachusetts gross income as Part A dividend income in the taxable year ending on December 31, 2019.<sup>[34] (#\_ftn16)</sup> Any Code § 78 gross-up attributable to such income should also be included in Massachusetts gross income and should be reported in the same manner.

Solely for purposes of determining and reporting deemed repatriated income, the status of a taxpayer as resident or non-resident will be determined by the taxpayer's status as resident or non-resident in the taxable year in which such income was required to be taken into account for federal tax purposes.<sup>[35] (#\_ftn17)</sup> For example, if a taxpayer was a Massachusetts resident in 2017 and was required for federal tax purposes to take deemed repatriated income into account for tax year 2017, the full amount of the taxpayer's deemed repatriated income for tax year 2017 would be included in Massachusetts gross income for tax year ending 2019. Alternatively, if the taxpayer was required to file a non-resident tax return in 2017 to report income derived from or effectively connected with a Massachusetts trade or business, the non-resident would be required to apportion or source the deemed repatriated income to Massachusetts for the taxable year ending 2019 using the same apportionment or sourcing method used in 2017.<sup>[36] (#\_ftn18)</sup>

Under the 2019 Supplemental Budget, chapter 62 taxpayers are allowed a deduction from Part A income in the taxable year ending on December 31, 2019 in an amount equal to 60% of their deemed repatriated income included in Part A income for the taxable year.<sup>[37] (#\_ftn19)</sup> The deduction provided in Code § 965(c) is not allowed for purposes of chapter 62.<sup>[38] (#\_ftn20)</sup> The basis adjustment principles set forth in Code § 965(f)(2) shall



apply in a manner consistent with the provisions of the 2018 and 2019 Supplemental Budgets and G.L. c. 62, § 6F.[\[39\]](#) ([#\\_ftn21](#))

Under the provisions of the 2019 Supplemental Budget, a chapter 62 taxpayer with Massachusetts tax liability attributable to deemed repatriated income who previously made a valid election pursuant to subsection (h) or subsection (i) of Code § 965 may pay his/her tax liability in eight installments, generally consistent with the rules set forth in Code § 965(h).[\[40\]](#) ([#\\_ftn22](#)) However, the deferral described in Code § 965(i) will not apply for Massachusetts purposes.[\[41\]](#) ([#\\_ftn23](#)) Accordingly, an S Corporation that has made a valid election pursuant to Code § 965(i) may not defer the recognition of deemed repatriated income for Massachusetts purposes, but is allowed to pay such liability in installments.

Payment of the tax liability attributable to deemed repatriated income is due on or before April 18, 2020. For taxpayers allowed to pay the liability in installments, however, the first three installments are due on or before April 18, 2020.[\[42\]](#) ([#\\_ftn24](#)) The remaining five installments must be paid on or before April 18 of the next 5 succeeding years, 2021 through 2025, inclusive.[\[43\]](#) ([#\\_ftn25](#))

## **2. GILTI**

For taxable years beginning on or after January 1, 2017, the 2018 Supplemental Budget added Code § 951A to the list of Code sections that chapter 62 follows on a current Code basis.[\[44\]](#) ([#\\_ftn26](#)) Consequently, for such tax periods, GILTI is included in Massachusetts gross income for personal income tax purposes. Pursuant to the 2018 Supplemental Budget, GILTI is included as Part A dividend income.[\[45\]](#) ([#\\_ftn27](#)) The deduction allowed for GILTI under newly-enacted Code § 250 is a corporate deduction and therefore is not available to individuals.

## **3. Deduction for FDII**

The deduction allowed for FDII under new Code § 250 is a corporate deduction and is not available to individuals.

## V. HOW TO REPORT DEEMED REPATRIATED INCOME AND GILTI ON A MASSACHUSETTS RETURN

TIR 18-11 instructed taxpayers to report deemed repatriated income for Massachusetts purposes by reference to the 965 statement, the federal statement used to report deemed repatriated income for the 2017 tax year. It has come to the attention of the Department of Revenue (the “Department”) that the 965 statement did not provide explicit guidance as to how to report the Code § 78 gross-up associated with deemed repatriated income, and that different taxpayers may have followed different reporting methods in this regard. For 2017 and 2018 tax years, Massachusetts gross income includes both (i) deemed repatriated income determined under Code § 965 and (ii) the Code § 78 gross-up associated with such deemed repatriated income. Taxpayers that have filed returns for 2017 or 2018 and have not included such Code § 78 gross-up amounts should amend those returns.

### A. Reporting for Corporate Taxpayers

The charts below provide instructions as to how a business corporation must report deemed repatriated income for taxable year 2017 and report deemed repatriated income and GILTI for taxable year 2018.

For taxable year 2017:

The amount of deemed repatriated income reported by a corporation for Massachusetts tax purposes is the gross amount reported on line 1 of the 965 statement filed with the corporation’s federal return.

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Taxpayer Type	How to Report the Income
Business corporation (including an S corporation subject to	Report deemed repatriated income, including any Code § 78 gross-up attributable to such income, as an adjustment on

the net income measure of the corporate excise), other than a financial institution

Schedule E, line 13. Also report this amount as a dividend when completing Schedule E-1.

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Financial institution (including an S corporation subject to the financial institution excise)	Report deemed repatriated income, including any Code § 78 gross-up attributable to such income, as an adjustment on Schedule A, line 10. Also include this amount on Schedule D, line 1. (Combine the amount of the deemed repatriated income and GILTI with the amount from US Form 1120, Schedule C, line 19 when completing Schedule D.)
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Combined group	Report deemed repatriated income, including any Code § 78 gross-up attributable to such income, as an adjustment to dividend income on Schedule U-M, line 4, column c. Individual members of the group should report the income on their returns in the manner of a business corporation or financial institution, as applicable.
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As previously announced, the Department is waiving estimated tax penalties imposed under G.L. c. 63B to the extent that an underpayment of estimated tax is attributable to Code § 965.<sup>[46]</sup> [\(#\\_ftn1\)](#) To claim a waiver, a business corporation is required to include Massachusetts Schedule M-2220, Underpayment of Massachusetts Estimated Tax by Corporations, with its return. The return should also be accompanied by Massachusetts Schedule TDS, Taxpayer Disclosure Statement, documenting the amount of federal gross income attributable to Code § 965 as well as an explanation of the Schedule M-2220 calculation.

For taxable year 2018:

Deemed repatriated income and GILTI are included in federal taxable income and reported on Form 1120, Line 4. Therefore, unlike for tax year 2017, no adjustments are required for Massachusetts tax purposes.

Taxpayer Type	How to Report the Income
Business corporation (including an S corporation subject to the net income measure of the corporate excise), other than a financial institution	Deemed repatriated income and GILTI, including any Code § 78 gross-up attributable to such income, are included in the amount reported on Schedule E (Taxable Income), line 4 (net income) and on Schedule E-1 (Dividends Deduction), line 1 (total dividends). No adjustments are required.
Financial institution (including an S corporation subject to the financial institution excise)	Deemed repatriated income and GILTI, including any Code § 78 gross-up attributable to such income, are included in the amount reported on Schedule A (Taxable Income), line 2 (net income) and on Schedule D (Dividend Deduction), line 1 (total dividends). No adjustments are required.
Combined group	No adjustment is required. Individual members of the group should report the income referenced above on their return in the manner of a business corporation or financial institution, as applicable.

For tax years beginning on or after January 1, 2018, business corporations must file MA Schedule FCI (Foreign Corporation Income of U.S. Shareholder) with their tax returns when reporting deemed repatriated income and/or GILTI.

## B. Reporting for Individual Taxpayers

### 1. Deemed Repatriated income

An individual, including an individual that is a member of pass-through entity, with deemed repatriated income for tax years 2017 and 2018 is required to include such amounts (including any Code § 78 gross-up associated with such income) in his/her Massachusetts income for the tax year ending on December 31, 2019. The amount of

deemed repatriated income for tax year 2017 is the gross amount reported on U.S. 2018, Form 965, Part I, line 6 filed with the individual's 2018 federal return. The amount of deemed repatriated income for tax year 2018 is the gross amount reported for federal tax purposes on U.S. 2018, Form 965, Part I, line 3 filed with the individual's 2018 federal return. Additional guidance on reporting deemed repatriated income for the tax year ending December 31, 2019 will be provided as updates to Massachusetts 2019 tax returns are completed.

Payment of the tax liability attributable to deemed repatriated income is due in full on or before April 18, 2020, unless a taxpayer has made a valid election under either Code § 965(h) or (i). In the latter case, payment of the tax liability attributable to deemed repatriated income is payable in 8 installments, consistent with Code § 965(h),[\[47\]](#) ([#\\_ftn2](#)) however, the first three installments are due on or before April 18, 2020.

An individual taxpayer who previously reported deemed repatriated income on a 2017 or 2018 Massachusetts tax return must file an amended Massachusetts tax return to exclude such income from the returns for those years, as applicable. An individual taxpayer that receives a final determination of a change by the federal government, or a final determination of a change in tax due in certain other jurisdictions, directly attributable to the taxpayer's deemed repatriated income for tax years 2017 and 2018, must report such change pursuant to G.L. c. 62C, §§ 30, 30A, as a change in the taxpayer's Massachusetts return for tax year 2019.

## 2. GILTI

For tax year ending December 31, 2018, the amount of GILTI reported by an individual, including an individual that is a member of a pass-through entity, for Massachusetts tax purposes is the amount reported on line 3 of Part II of Form 8992 filed with the individual's 2018 federal return (including any Code § 78 gross-up associated with such income).

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### How to Report the GILTI

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Resident	Report as dividend income on Schedule B, Line 3 Form 1
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Non-Resident

Report as dividend income on Schedule B, Line 3 Form 1--NRPY

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/s/Christopher C. Harding  
Christopher C. Harding  
Commissioner of Revenue

CCH:RHF:lbr

August 8, 2019

TIR 19-11

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[\[1\]](#) ([#\\_ftnref1](#)) P.L. 115-97 § 14101.

[\[2\]](#) ([#\\_ftnref2](#)) P.L. 115-97 § 14103.

[\[3\]](#) ([#\\_ftnref3](#)) See Code § 965(h).

[\[4\]](#) ([#\\_ftnref4](#)) See Code § 965(i).

[\[5\]](#) ([#\\_ftnref5](#)) IRS Notice 2018-26, 2018 -16 I.R.B. 480.

[\[6\]](#) ([#\\_ftnref6](#)) P.L. 115-97 § 14201.

[\[7\]](#) ([#\\_ftnref7](#)) Code § 951A(b).

[\[8\]](#) ([#\\_ftnref8](#)) P.L. 115-97 § 14202.

[\[9\]](#) ([#\\_ftnref9](#)) *Id.*

[\[10\]](#) ([#\\_ftnref1](#)) St. 2018 c. 273, §§ 9, 14.

[\[11\]](#) ([#\\_ftnref2](#)) St. 2018 c. 273, §§ 12, 15.

[\[12\]](#) ([#\\_ftnref3](#)) St. 2018 c. 273, § 13.

[\[13\]](#) ([#\\_ftnref4](#)) St. 2018 c. 273, § 69.

[\[14\]](#) ([#\\_ftnref5](#)) St. 2018 c. 273, § 7. The 2018 Supplemental Budget also added Code § 529A to the list. See TIR 18-14: Impact of Selected Provisions of the Federal Tax Cuts and Jobs Act on Massachusetts Personal Income Tax under Chapter 62.

[\[15\]](#) ([#\\_ftnref6](#)) St. 2018 c. 273, § 8.

[\[16\]](#) ([#\\_ftnref7](#)) St. 2019 c. 5, § 30.

[\[17\]](#) ([#\\_ftnref8](#)) *Id.*

[\[18\]](#) ([#\\_ftnref9](#)) St. 2018 c. 273, § 68.

[\[19\]](#) ([#\\_ftnref1](#)) See G.L. c. 63, §§ 1, 30.4, as amended by St. 2018 c. 273, §§ 9, 14.

[\[20\]](#) ([#\\_ftnref2](#)) See *Dow Chemical Co. v. Comm’r*, 378 Mass. 254 (1979). The foreign tax gross-up amount attributable to a business corporation’s deemed repatriated income and included in the business corporation’s federal gross income under Code § 78 is treated as dividend income for Massachusetts purposes, and is eligible for the dividends received deduction. See *id.* at 277.

[\[21\]](#) ([#\\_ftnref3](#)) Dividends paid by a corporation that is a member of a combined group to another combined group member are eliminated from the income of the recipient to the extent those dividends are paid out of earnings and profits of the unitary business included in the combined report, from the current or an earlier year. 830 CMR 63.32B.2(6)(c)4.a. The 95% dividends received deduction does not apply where dividends have been eliminated. In general, however, this TIR assumes that foreign subsidiaries to which deemed repatriated earnings are attributed are not included in, and have not been included in, the same combined report as the U.S. shareholder recognizing the deemed repatriated income.

[\[22\]](#) ([#\\_ftnref4](#)) G.L. c. 63, §§ 1, § 30.4, as amended by St. 2018 c. 273, §§ 12, 15.

[\[23\]](#) ([#\\_ftnref5](#)) This TIR assumes that the deemed repatriated income is unitary business income subject to rules of apportionment rather than being subject to allocation, as generally described in 830 CMR 63.38.1(3).

[\[24\]](#) ([#\\_ftnref6](#)) G.L. c. 63, § 38(f).

[\[25\]](#) ([#\\_ftnref7](#)) With respect to a parent corporation meeting certain ownership thresholds, G.L. c. 63, § 30.4 states that, “In lieu of disallowing any deduction allocable, in whole or in part, to dividends not included in a corporation’s taxable net income, five per cent of such dividends shall be includable therein....”

[\[26\]](#) ([#\\_ftnref8](#)) The foreign tax gross-up amount attributable to a business corporation’s GILTI and included in the business corporation’s federal gross income under Code § 78 is treated as dividend income for Massachusetts purposes, and is eligible for the dividends received deduction. See *Dow Chemical*, 378 Mass. at 277.

[\[27\]](#) ([#\\_ftnref9](#)) See G.L. c. 63, §§ 1, 30.4, and 38(a).

[\[28\]](#) ([#\\_ftnref10](#)) G.L. c. 63, §§ 1, § 30.4, as amended by St. 2018 c. 273, §§ 12, 15.

[\[29\]](#) ([#\\_ftnref11](#)) G.L. c. 63, § 38(f).

[\[30\]](#) ([#\\_ftnref12](#)) See G.L. c. 63, § 30.4; footnote 23, *supra*.

[\[31\]](#) ([#\\_ftnref13](#)) St. 2018 c. 273, §§ 12, 14.

[\[32\]](#) ([#\\_ftnref14](#)) G.L. c. 62, § 1.

[\[33\]](#) ([#\\_ftnref15](#)) St. 2018 c. 273, § 7.

[\[34\]](#) ([#\\_ftnref16](#)) St. 2019 c. 5, § 30.

[\[35\]](#) ([#\\_ftnref17](#)) *Id.*

[\[36\]](#) ([#\\_ftnref18](#)) *Id.*

[\[37\]](#) ([#\\_ftnref19](#)) *Id.*

[\[38\]](#) ([#\\_ftnref20](#)) *Id.*



[\[39\]](#) ([#\\_ftnref21](#)) *Id.*

[\[40\]](#) ([#\\_ftnref22](#)) *Id.*

[\[41\]](#) ([#\\_ftnref23](#)) *Id.*

[\[42\]](#) ([#\\_ftnref24](#)) *Id.*

[\[43\]](#) ([#\\_ftnref25](#)) *Id.*

[\[44\]](#) ([#\\_ftnref26](#)) St. 2018 c. 273, § 7.

[\[45\]](#) ([#\\_ftnref27](#)) St. 2018 c. 273, § 8.

[\[46\]](#) ([#\\_ftnref1](#)) See TIR 18-4.

[\[47\]](#) ([#\\_ftnref2](#)) Code § 965(h) provides for 8 installments of the following amounts: 8 percent of the tax liability in the case of each of the first 5 of such installments, 15 percent of the tax liability in the case of the 6th such installment, 20 percent of the tax liability in the case of the 7th such installment, and 25 percent of the tax liability in the case of the 8th such installment.

REFERENCED SOURCES:

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